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SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-71725; File No. SR-NSCC-2014-03

March 14, 2014

Self-Regulatory Organizations; National Securities Clearing Corporation (“NSCC”);  
Notice of Filing of Proposed Rule Change to Enhance the System that Processes  
Corporate Actions Within NSCC’s Continuous Net Settlement (“CNS”) System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 6, 2014, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consist [sic] of amendments to the Rules & Procedures (“Rules”) of NSCC to enhance the system that processes corporate actions within NSCC’s Continuous Net Settlement (“CNS”) system, as more fully described below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

below. NSCC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC has recently enhanced the system that applies corporate actions to Members' open failed positions within CNS. While the enhancements to corporate action processing would not require NSCC Members to make any coding changes, NSCC is proposing to update Procedure VII of its Rules in order to reflect these enhancements.

One of NSCC's core service as a central counterparty is trade clearance and settlement through CNS, where compared and recorded transactions in eligible securities<sup>3</sup> for a particular settlement date are netted by issue into one net long (buy) or net short (sell) position. As a continuous net system, those positions are further netted with positions of the same issue that remain open after their originally scheduled settlement date (usually T+3), so that trades scheduled to settle on any day are netted with fail positions to result in a single deliver or receive obligation for each Member for each issue in which it has activity. As part of the services offered to NSCC Members, certain corporate actions, including cash dividends, stock dividends, bond interest, and other mandatory corporate actions (which include redemptions, stock and cash mergers, and name changes) are automatically debited or credited to Member's CNS accounts with open fail positions in CNS. Members are also permitted to take part in certain voluntary

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<sup>3</sup> To be CNS-eligible, a security must be eligible for book-entry transfer on the books of The Depository Trust Company ("DTC"), an NSCC affiliate, and must be capable of being processed in the CNS system; for example, securities may be ineligible for CNS processing due to certain transfer restrictions (i.e., 144A securities) or due to the pendency of certain corporate actions.

corporate actions, which include tender or exchange offers, with respect to open fail positions in CNS.

Enhancements to the processing of corporate actions within CNS, described below, would provide Members with more timely and detailed information regarding applicable corporate action events, would support additional corporate action events, and would provide short Members (i.e. Members that have failed to deliver securities to CNS) with information on their final liability on the same day that liability is applied to their CNS account. The proposed enhancements would also provide NSCC staff with an improved ability to monitor and process voluntary corporate action events. These enhancements are reflected in the proposed rule changes on Exhibit 5<sup>4</sup> hereto and are described below.

#### *Optional Dividends*

When a fail position in CNS is subject to a dividend payment, the issuer will specify the form in which that dividend will be paid (i.e. in securities or cash), called the “default option”. NSCC long Members (i.e. Members that have failed to receive securities from CNS) may elect a form of payment that differs from the default option by submitting an instruction to NSCC no later than a pre-set date and cut-off time. While these elections are submitted manually today, under the enhancements to the processing of corporate actions, these elections would be submitted to NSCC electronically.

Today, NSCC sets a cut-off time that is based on the cut-off time set by DTC for the submission of these instructions. Going forward, NSCC would set the date and cut-off time that

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<sup>4</sup> See Exhibit 5 of the Proposed Rule Change Filing, available at <http://www.sec.gov/rules/sro/nscs.shtml> under File No. SR-NSCC-2014-04, Additional Materials.

is earlier than the DTC cut-off time, to provide the short Member with additional time to communicate that election to their counterparty.

NSCC's Procedure VII, Section G.4 would be updated as marked in Exhibit 5 hereto to reflect these changes.

*Support "Offer to Consent" Tender/Exchange Offers*

Today, if a fail position in CNS is subject to a tender or exchange offer that includes an "offer to consent", in order to participate in that tender or exchange offer the open fail position would be closed and exited out of CNS, and would settle directly between counterparties outside of CNS. The proposed enhancements would permit NSCC Members with fail positions in CNS to participate in tender or exchange offers that include an "offer to consent" within CNS.

Under the proposed Rule changes, CNS would support tender/exchange offers that include an "an offer to consent". These corporate actions were not previously processed by NSCC in CNS. NSCC's Procedure VII, Section H.4 would be updated as marked in Exhibit 5 hereto to reflect this change.<sup>5</sup>

*Protect Submission and Liability Notification*

Currently, the cut-off time for a long Member to place a "protect" on an open fail position in CNS in order to participate in an upcoming corporate action, or to add shares to a voluntary corporate action, is either on the business day prior to "protect" expiration date or, when there is no "protect" for that corporate action, on the business day prior to the expiration date of the corporate action. Today, because long Members may incur additional costs for failing to meet these deadlines, NSCC staff today may, in its discretion and on a best efforts

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<sup>5</sup> Id.

basis, may accept and process these instructions either on the “protect” expiration or on the expiration date of the corporate action.

Under the proposed enhancements, NSCC Members would submit these instructions to NSCC electronically, and, for a fee of US \$500.00, NSCC Members would be permitted to submit instructions to place a “protect” on an open fail position in CNS in order to participate in an upcoming corporate action, or to add shares to a voluntary corporate action either on “protect” expiration date or, when there is no “protect” for that corporate action, on the expiration date of the corporate action.

NSCC’s Procedure VII, Section H.4 (b), including the table in that Section, would be updated as marked in Exhibit 5<sup>6</sup> hereto to reflect this change.

*Final Liability & Final Protection Notification*

Today, CNS will alert a short Member of their final assigned liability with respect to voluntary corporate actions either on the business day after “protect” expiration date for that corporate action or, when there is no “protect” for that corporate action, on the business day after the expiration date of the corporate action.

Under the proposed Rule changes, CNS would alert the short Member of their assigned final liability no later than the close of business on the same business day the final liability is assigned to that Member by CNS. The proposed Rule change would also make clear that long Members would be notified that their fail positions in CNS would be subject to the protection for that corporate action no later than the close of business on the same business day the final protection is assigned to that Member by CNS.

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<sup>6</sup> Id.

NSCC's Procedure VII, Section H.4 (b), including the table in that Section, would be updated as marked in Exhibit 5<sup>7</sup> hereto to reflect this change.

*SMART/Track for CNS Corporate Actions*

Under the proposed Rule changes, Members would submit instructions to participate in a voluntary reorganization and would access all corporate action processing output data through SMART/Track for CNS Corporate Actions, which is available within the SMART/Track for Corporate Action Liability Notification Service. The output data, which today is delivered to Members through files and reports, would be visible through on-line screens with search options and filters.

NSCC's Procedure VII, Section H.4 would be updated as marked in Exhibit 5<sup>8</sup> hereto to remove reference to the existing files and reports.

*Restriction on Movement of Positions between CNS Sub-Accounts*

Under the proposed enhancements, when a voluntary reorganization is being processed on a security, CNS would no longer permit the movement of positions for that security between non-reorganization sub-accounts (which include, for example, the CNS General Account and the CNS Fully-Paid-For Account) either on the "protect" expiration date, or, when there is no "protect" for that voluntary reorganization, on the expiration date of the voluntary reorganization.

In order to make this change, NSCC's Procedure VII, Section H.4 (b) would be updated as marked in Exhibit 5.<sup>9</sup>

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

### *Additional Rule Changes*

In addition to the enhancements described above, NSCC is proposing to amend Procedure VII, Section H.4(b) to make clear that the Rules are drafted assuming the processing of subject securities with a protect period of three days, and the table included in that section sets forth the time frames for processing of subject securities with a protect period of two days or less. As such, NSCC would amend Sections G and H of Procedure VII (CNS Accounting Operation), as described above and as reflected in Exhibit 5 hereto.

### *Implementation Timeframe*

Subject to approval of this filing, NSCC proposes to implement the proposed rule changes in multiple phases during 2014. Pending Commission approval, Members will be advised of the implementation dates of the proposed rule changes through issuance of an NSCC Important Notice.

## **2. Statutory Basis**

NSCC believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (“Act”) and the rules and regulations thereunder applicable to NSCC, in particular Section 17A(b)(3)(F) of the Act<sup>10</sup>, which requires that NSCC’s Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. By providing for greater efficiency and automation with respect to processing corporate actions applicable to open failed positions within CNS, the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions.

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<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, [sic] and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such a proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NSCC-2014-03 on the subject line.



Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NSCC-2014-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's website at (<http://www.dtcc.com/>).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NSCC-2014-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

[FR Doc. 2014-06187 Filed 03/20/2014 at 8:45  
am; Publication Date: 03/21/2014]

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<sup>11</sup> 17 CFR 200.30-3(a)(12).